IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 691 of 2005
To
CRIMINAL REVISION APPLICATION No. 697 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GORDHANBHAI KACHARABHAI VAGHASIA - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR BC DAVE for Applicant(s)
MR HM PRACHCHHAK APP for Respondent(s) : 1,
NOTICE UNSERVED for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 25/10/2005

COMMON ORAL JUDGMENT

1. By instant batch of seven Criminal Revision Applications, the petitioner seeks to challenge

separate judgment and order dated 20.5.2005 recorded in Criminal Appeal Nos. 8 to 14 of 2005 by the learned Additional Sessions Judge, Junagadh by which the appeals filed by the petitioner have been dismissed and thereby separate judgment and order dated 29.12.2004 recorded in Criminal Case Nos. 264 to 270 of 2004 by the learned Chief Judicial Magistrate, Junagadh convicting the petitioner for the commission of the alleged offence under sections 406 and 420 of the IPC and sentenced him to suffer S.I. For two years and fine of Rs.200/- and in default of payment of fine S.I. For one month separately imposed for both the offences and both the sentences were ordered to run concurrently, has been confirmed.

2. Against the petitioner, separate seven complaints came to be lodged with A Division Police Station, Junagadh which are as under:

(I).CR I-9/2002 for cheating the complainant's mother by taking away golden bengals weighing 50 grams worth Rs.16,000/-

(II). CR No.I-119/02 for cheating the complainant by taking away golden bengals of 20 grams worth Rs.6,000/-

(III). CR.No.I-60/2003 – for cheating the complainant by taking way golden earrings worth Rs.1,000, golden chain of Rs.7000/- and golden chudali worth Rs.5,000/- totaling Rs.13,000/-.

(IV). CR No.I-276/2003 for cheating the complainant by taking way golden bengals worth Rs.24,000/-

(V).CR No.I-121/2001 for cheating the complainant by taking way golden bengals of 2 and half tola worth Rs.8,000/-

(VI). CR No.I-258/2001 for cheating the complainant by taking away golden bengals worth Rs.15,000/-

(VII). CR No.I-10/2002 for cheating the complainant by taking away golden bengals worth

Rs.7,500/- and golden chain worth Rs.3,000/- totaling Rs.10,500/-.

Total value of the golden ornaments was Rs.92,500/.

3. During the course of investigation the petitioner was arrested on 19.11.2003 and thereafter he was charge sheeted separately for all the offences in the court of learned Chief Judicial Magistrate, Junagadh wherein the cases were registered as Criminal case Nos.264 of 2004 to 270 of 2004. The petitioner was tried separately in all the criminal cases.

4. At the end of the trial he was found guilty by the learned Chief Judicial Magistrate, Junagadh. He, therefore, vide separate judgment and order dated 29.12.2004 convicted the petitioner for the offences under Sections 406 and 420 of the IPC and sentenced him to suffer

simple imprisonment for a period of two years and fine of Rs.200 and in default of payment of fine, simple imprisonment for further period of one month for the offence under section 406 and and also sentenced him to suffer simple imprisonment for a period of two years and fine of Rs.200 and in default of payment of fine, simple imprisonment for a further period of one month for the offence under section 420 of IPC. It was also ordered that the sentences for both the offences shall run concurrently.

Though the learned Chief Judicial Magistrate has convicted the petitioner in all seven cases by delivering separate judgment and order dated 29.12.2004, he has not passed any order as to whether the sentence imposed upon the accused in each case shall run separately i.e., one after the order, or concurrently.

5. Aggrieved thereby the petitioner went in

appeal before the sessions court, Junagadh by filing separate appeal Nos.8 to 14 of 2004 and the learned Additional sessions Judge, Junagadh vide separate judgment and order dated 20.5.2005 dismissed the appeals and thereby confirmed the order of conviction and sentence imposed upon the petitioner which has given rise to instant batch of seven criminal revision applications at the instance of the accused.

6. Mr. BC Dave, learned advocate for the petitioner does not press this revision applications on merit and confined his submissions only to the prayer that the sentence imposed in each case may be ordered to run concurrently by virtue of the powers conferred under section 427 of the Code. He further submitted that the petitioner has almost undergone imprisonment for a period of about two years as the actual period of two years would be over on 19.11.2005 and therefore he urged to pass

appropriate orders by modifying the order passed by the learned Chief Judicial Magistrate by saying that the substantive sentences imposed on the petitioner in all the cases shall run concurrently in exercise of powers conferred under section 427 of the Code.

7. Mr. HM Prachchhak, learned APP submitted that the petitioner has cheated in all seven persons and he has been convicted and sentenced in all the seven cases. However, the learned Chief Judicial Magistrate has not ordered that the sentence imposed on the accused in all the seven cases shall run concurrently or separately i.e., one after another. He further submitted that the offence under Sections 406 and 420 of IPC is compoundable and therefore if the petitioner deposits an amount equivalent to the value of the gold ornaments taken away by him from the complainants by cheating them for which separate seven cases of cheating have been

registered against him, in that case, this Court may exercise the powers under Section 427 of the Code by showing leniency upon the petitioner. He therefore urged that appropriate order may be passed.

8. This Court has considered the submissions advanced by the learned advocates appearing of the parties, perused both set of the impugned judgment and order, one set of passed by the learned CJM Junagadh and the second set of passed by the learned Additional Sessions Judge, Junagadh by which the order passed by the learned CJM has been confirmed in appeals as well as the provisions of section 427 of the Code.

9. It is true that against the petitioner seven separate FIRs were lodged at A Division Police station, Junagadh for commission of offence under section 406 and 420 of the IPC since he has cheated the complainants on one or the other

pretext and thereby has taken gold ornaments from them and therefore he was prosecuted in separate seven trial and in all the cases he was convicted for the offence under section 406 and section 420 of IPC and was ordered to suffer SI for 2 years and to pay fine of Rs.200 for offence under section 406 as well as SI for 2 years and fine of Rs.200 for offence under section 420 of IPC. The judgment and order of conviction and sentence was imposed on all the cases on the same day but the learned Chief Judicial Magistrate has not exercised powers under section 427 (1) of the Code and therefore obviously the petitioner has to undergo sentence in each case one after another and therefore the petitioner has to undergo in all 14 years simple imprisonment in seven separate cases and the said aspect has not been considered by the learned Additional Sessions Judge also.

10. At the time of hearing of instant batch of

seven criminal revision applications, this court has directed the learned advocate Mr. Dave, for the petitioner to join original complainants as respondent No.2 in each case and in compliance of the said direction Mr. Dave has joined original complainant as respondent No.2 in each case. But in some matters the original complainant appeared in person and in some cases they elected not remain present.

11. It may be noted that offence under section 406 and 420 of the IPC is compoundable at the instance of the original complainant. The anxiety of the court of directing the petitioner to implead the original complainant as party respondent No.2 was to see that since the offence between the petitioner and original complainant is compoundable, if the complainants want to compound they may compound the same. However, most of the complainants did not remain present, and, therefore, this court deems it expedient to

accede to the request made by Mr. Dave by exercising powers under section 427 of the Code to direct that all the substantive sentences imposed on the petitioner in separate seven cases should run concurrently by imposing the condition upon him to deposit the amount equivalent to the value of the ornament which have been taken away by him from the original complainant by cheating them.

12. In aforesaid view of the matter, the sentence imposed upon the petitioner in all the cases can be ordered to run concurrently on condition that the petitioner shall deposit an amount equivalent to the value of the gold ornaments which have been taken away by him from the complainants by cheating them, in the Court of the learned Chief Judicial Magistrate, Junagadh.

13. For the foregoing reasons, all the petitions succeed in part and accordingly they are partly

allowed and accordingly sentence imposed on the petitioner in each of the case i.e., Criminal case Nos.264 to 270 of 2004 shall run concurrently in exercise of powers conferred under section 427 of the Code on condition that the petitioner shall deposit total amount of Rs.92,500/- as shown in the foregoing paragraph (2) of this judgment, in the Court of learned Chief Judicial Magistrate, Junagadh.

14. On the petitioner depositing the aforesaid amount in the Court of learned Chief Judicial Magistrate, Junagadh, he shall issue notice to each of the complainant and shall pay the amount equivalent to the value of the gold ornaments taken away by the petitioner by cheating them, as stated in the foregoing paragraph of this judgment, from the amount of Rs.92,500/- which shall be deposited by the petitioner in the Court, upon due verification.

The petitioner shall be released on expiry of the actual period of imprisonment of two years.

Rule is made absolute to the aforesaid extent.

DS is permitted.

(A.M. Kapadia, J.)

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